

1 REGULAR MEETING OF THE BOARD OF ZONING APPEALS

2 City Council Chambers

3 300 Park Avenue

4 Falls Church, Virginia 22046

5 July 14, 2016

6 7:30 p.m.

7 1. CALL TO ORDER

8 CHAIR WILLIAMSON: I would like to call to order the July 14,
9 2016, regular meeting of the Board of Zoning Appeals of the City of
10 Falls Church.

11 Roll call please.

12
13 2. ROLL CALL

14 RECORDING SECRETARY: Mr. Williamson.

15 CHAIR WILLIAMSON: Here.

16 RECORDING SECRETARY: Mr. Krasner.

17 MR. KRASNER: Here.

18 RECORDING SECRETARY: Mr. Calabrese is absent.

19 Mr. Howell. He is on the way.

20 Mr. Jones.

21 MR. JONES: Here.

22 RECORDING SECRETARY: Mr. Theologis.

23 MR. THEOLOGIS: Here.

24 RECORDING SECRETARY: Mr. Boyle is absent.

25 CHAIR WILLIAMSON: I just want to thank Mr. Theologis who
26 will be stepping in in his alternate role. And I also point out Mr.
27 Howell is not present when the roll was called. We understand he is
28 on his way.

29 Normally I would reorder the Order of Business to get to New
30 Business, but in light of one of our members who's on the way, I will
31 proceed with the approval of minutes and give him a little time to
32 arrive,

33

34 3. APPROVAL OF MINUTES

35 A. Approval of the June 16, 2016 Minutes

36 CHAIR WILLIAMSON: So if I could ask everyone to take a look
37 at the June 16, 2016, minutes, take a few minutes to look through
38 those and I'll ask for a motion to approve.

39 (Minutes reviewed.)

40 MR. KRASNER: Yes, I'll move that we approve the minutes of
41 June 16, 2016.

42 CHAIR WILLIAMSON: Is there a second?

43 MR. JONES: Second.

44 CHAIR WILLIAMSON: Okay. Thank you.

45 Roll call vote.

46 RECORDING SECRETARY: Mr. Williamson.

47 CHAIR WILLIAMSON: Yes.

48 RECORDING SECRETARY: Mr. Krasner.

49 MR. KRASNER: Yes.

50 RECORDING SECRETARY: Mr. Calabrese -- he's absent.

51 Mr. Howell. He's absent.

52 Mr. Jones.

53 MR. JONES: Yes.

54 RECORDING SECRETARY: Mr. Theologis.

55 MR. THEOLOGIS: Yes.

56

57 4. OLD BUSINESS

58 CHAIR WILLIAMSON: Okay. The next item on the agenda is Old

59 Business. I don't think we have any Old Business on here.

60

61 5. PETITIONS

62 CHAIR WILLIAMSON: Are there any petitions from the staff or

63 petitions from the audience?

64 I don't see any.

65 Please make a note that Mr. Howell is arriving so we can mark
66 him as present.

67

68 6. NEW BUSINESS:

69 a. Variance application V1582-16 by Charles and Kimberly Cates,
70 owner and applicant, for a variance to Section 48-263(5)(a) and
71 48-263(6) to allow a lot coverage of thirty (30) percent instead of
72 twenty five (25) percent; and to allow a impervious lot coverage of
73 forty (40) percent instead of thirty five (35) percent for the
74 purpose of constructing a new single-family house on premises known
75 as 301 North Lee Street, RPC #51-125-011 of the Falls Church Real
76 Property Records, zoned R-1B, Medium Density Residential.

77

78 CHAIR WILLIAMSON: We will move on to New Business, Variance
79 application V1582-16 by Charles and Kimberly Cates, owner and
80 applicant, for a variance to Section 48-263(5)(a) and 48-263(6) to
81 allow a lot coverage of thirty percent instead of twenty five
82 percent; and to allow an impervious lot coverage of forty percent
83 instead of thirty five percent for the purpose of constructing a new
84 single-family house on premises known as 301 North Lee Street,

85 RPC #51-125-011 of the Falls Church Real Property Records, zoned
86 R-1B, Medium Density Residential.

87 I'd like to ask the applicants to step forward and go ahead
88 and if both of you would sign in there.

89 MS. ROUZI: Mr. Garland is one of my colleagues and he is
90 just shadowing me today to learn.

91 CHAIR WILLIAMSON: Welcome.

92 We're going to ask you to stand and be sworn in.

93 (Witnesses sworn.)

94 CHAIR WILLIAMSON: Let the record show the applicants have
95 been sworn in.

96 And before we hear from the applicants, I think we'd like
97 to get just a brief report from staff before proceeding.

98 MS. ROUZI: So the applicant is requesting a lot coverage
99 of 30 percent instead of 25 percent and they're requesting a lot
100 coverage of -- impervious coverage of 40 percent instead of the 35
101 percent.

102 With that, I'll just defer to the applicant.

103 CHAIR WILLIAMSON: Okay. Would you like to go ahead and
104 proceed.

105 First, please state your name and address and then proceed.

106 MR. CATES: Okay. I'm Charles Cates. I live at 505 Great
107 Falls Street.

108 MS. CATES: And I'm Kim Cates. And I live at the same
109 address.

110 MR. CATES: Well, first of all, thank you for hearing this.
111 We're really excited to be in Falls Church. We actually just moved
112 here a couple weeks ago from Arlington, right around the corner, 505
113 Great Falls Street is right around the corner from 301 West Lee
114 Street, where we're hoping to build a house.

115 So, I want to start out and say that this is probably a
116 little bit different Variance than what you're used to hearing.
117 You're probably used to hearing things, you know, there's a
118 deficiency with the lot, you know, it's a funny shape or, you know,
119 about something or there's a big hill or something like that.

120 This is different from that instance because the hardship
121 isn't with the lot; the hardship in this case is actually defined by
122 the Americans with Disabilities Act.

123 So our son is Howie, he's four years old, will be five in
124 September. He has cerebral palsy and so what we're hoping to do is
125 build an accessible home that he can grow up in and be with us for a
126 long period of time.

127 And so to do that, we've been working for a long time with
128 our architect to come up with what the best solutions are and we feel
129 like we have a really good solution but that brings us to the request
130 that we want to make. And that's 30 percent for lot coverage
131 building under roof and 40 percent impervious area coverage.

132 And those things are, I know that it sounds, when you say
133 it, it sounds like we're trying to build a huge house on a small lot
134 and that's not the case at all.

135 I've written this letter, I hope you've had a chance to
136 review it. There are two things really in the construction of the
137 house that are driving the impervious coverage and the building
138 coverage. And we feel like both of them are reasonable and that's a
139 good point I should point out.

140 With the Americans with Disabilities Act, it requires
141 localities to make reasonable accommodations. Well, what's
142 reasonable? That's a judgment call really.

143 And so it requires balancing the needs of the disabled
144 person with the needs of the locality to have a neighborhood feel, to
145 have -- to make sure that the City and the locality isn't doing
146 something that's out of line, that would be out of the realm of what
147 the neighbors would want or anything like that.

148 And I think that we're clear in that standpoint.

149 So the first thing that we're doing in the plan, and
150 actually if you look at, we'll go to Attachment 4, is the preliminary
151 ground floor house plan.

152 The first thing that's driving up the impervious area
153 coverage, not necessarily the building coverage, the area under roof,
154 but the impervious coverage is a side load garage. The reason that
155 that drives up the impervious area coverage is that the driveway
156 needs to come along the side of the house so that you can then pull
157 into the garage.

158 The reason that we want to do that is for accessibility.
159 You can see in the picture there, there's an accessible van where the
160 ramp comes out the passenger side. That's how they build accessible
161 vans, the ramp comes out the passenger side.

162 And what that allows Howie to do is come out of the van and turn left
163 and go straight into the house.

164 If this were a front load garage, you would pull in and you
165 can, you know, just turn it 90 degrees there. He would come out of
166 the van, have to go back around the back of the van, back outside,
167 back in, make a left turn and then make a right turn in the mudroom.

168 So really, this is about ease of access into the home. And

169 the way that we do that is with a side load garage in this case. It
170 drives up the impervious area coverage but I think that it's
171 reasonable in order to have clean access into the house for Howie.

172 So the next thing is you'll see that there's a large front
173 porch. There's a screened porch, there's a patio. All of these
174 things are done on purpose and they definitely do increase the
175 building coverage because the porches are under roof, both the
176 screened porch and the front porch are under roof. The patio is not
177 under roof but that does increase the impervious area.

178 And the reason for that though is several. One is that
179 Howie's power chair is not great in the mud or in the sand or in
180 grass. For him to enjoy being outside, he needs paved surfaces that
181 he can drive in. I mean, he loves to drive in the mud, he's four
182 years old, but it doesn't work that well for the power chair to be
183 honest.

184 So the porches provide him with some outdoor living space.
185 We've got raised planter beds that we want to put in so he can enjoy
186 some gardening and enjoy plants, enjoy being outside. And then also
187 the front porch has the added benefit of connecting to the mud room
188 so this is an inclement weather kind of access thing for a person in
189 a power chair.

190 So he can go, instead of coming in through the front door,
191 he can go into the mud room and this little corner down at the corner
192 of the porch there in the mudroom is actually a wheelchair wash
193 station. So he goes in, we can wash his wheels off and then he can
194 drive into the house so it's not tracking dirt, sand, whatever into
195 the house.

196 So the porch is really -- I think it's important for access
197 to the home in inclement weather.

198 So those are the reasons we want to do that. And I wanted
199 to make sure that we're not doing anything that our neighbors are
200 going to find offensive. We're not trying to build a house that's
201 towering over anyone or anything like that.

202 And so I went through and looked at a number of different
203 things in the area.

204 First I looked at the Falls Church website and the Zoning
205 Ordinance Rewrite Project I found actually encourages porches, and
206 it encourages garages and things like that. Or garages that are not
207 a focus point of the house. And I think that this, definitely the
208 garage is off to the side. The porch is inviting and welcoming. I
209 think that it's going to be a really nice feature of the house.

210 So that's a benefit, that's it's in line with the rewrite

211 project that the Zoning Board did.

212 And then the other thing that I did is kind of go through
213 and do a little bit of a data analysis on real estate in Falls
214 Church.

215 So I looked at the Falls Church City tax records for home
216 sales of new construction homes. I also looked at Redfin and just
217 kind of correlated my data sources with that.

218 So I found that our design is 4,760 square feet and in the
219 last year in Falls Church the average size of a new construction home
220 has been in excess of 4800 square feet. So this is actually smaller
221 than an average living area for new construction in the City and
222 that's actually on a larger lot. The lots are averaging 200 square
223 feet smaller than the lot that we have which is 10,012 square feet.

224 So then I also wanted to look at our own local area and
225 there have been, in the last five years there were six new homes
226 built in about a one block radius of our house. The average of those
227 has been in excess of 6000 square feet. And I pointed out in the
228 letter that the design that we're proposing is actually the smallest
229 new construction in the last five years within a block of our house.

230 So it's not that we're trying to build a towering McMansion
231 that covers a lot of the lot; it's that we made some very specific

232 design choices that drive up the impervious coverage and the building
233 coverage of the lot.

234 You know, if I was building a house that was not going
235 to -- that I wasn't concerned about accessibility features, I would
236 just do a front load garage, and I would probably just get rid of the
237 porch and have a stoop front porch. That's what I think most of the
238 new construction is doing these days. And we would be there. That
239 would be it.

240 But we feel really strongly about building a house that
241 Howie is going to be able to be with us for a long time. And I think
242 that building it right the first time is the way to do that. And I
243 think that the things that we're asking for are reasonable, they're
244 not unreasonable, and I don't think that they're going to impact
245 negatively the neighborhood or the feel of the area.

246 To that effect, I actually did get letters from several of
247 our neighbors, so I can pass these out to you if you'd like.

248 CHAIR WILLIAMSON: Thank you.

249 MR. CATES: They're the neighbors who are closest to us.
250 In fact, we have some neighbors here with us right now.

251 But they're the neighbors who are going to be closest and I
252 think the most affected by what we're doing.

253 So it's the neighbors, if we look at the plat, Attachment
254 3. On Lee Street, we're at the corner of Fulton and Lee. It's the
255 house immediately to the right on Lee Street there. It says existing
256 dwelling. That's one neighbor who has signed a letter.

257 The neighbor directly across the street on Fulton Avenue
258 has also signed a letter of support. The next door neighbor from
259 them has also signed a letter of support. And then another neighbor
260 down at the corner has signed a letter of support.

261 So we've been able to reach out and talk about our plans
262 with our neighbors and I think that they are all supportive. We
263 haven't come up with any resistance.

264 Do you have any questions?

265 CHAIR WILLIAMSON: Thank you.

266 Yes, are there any questions for the applicants?

267 MR. KRASNER: Mr. Chairman, just a technical question,
268 first to staff.

269 On their plat, and the photograph is not great, but in the
270 calculations for impervious cover, I see that the calculation that
271 says the total area of impervious is at 41.7.

272 MR. CATES: Yes.

273 MR. KRASNER: And I see then the building coverage is at

274 28.8.

275 Now, that does not seem to be consistent with the
276 advertisement that's listed on the agenda. And for the one that's
277 below, the building coverage, that's not such a problem. But for the
278 impervious area, which was advertised at 40, they're at 41.7. That's
279 a flaw in the advertising.

280 MR. CATES: That's right. And I can address that.

281 MR. KRASNER: Well, the problem is we can't have the
282 hearing. We can't, we couldn't do it even if we wanted to approve
283 that number, if it hasn't been advertised properly, we can't even act
284 on it.

285 MR. CATES: Well, there's a credit available for using
286 impervious driveway surfaces.

287 MR. KRASNER: Right, I know. But I mean just technically,
288 from a legal advertisement, it's a public hearing, and so that number
289 got sent to the paper, got sent to letters all around your
290 neighborhood, so there's a sign probably in your yard. That number
291 has to be accurate. You can over- advertise, but you can't
292 under-advertise. So you can advertise more than you need and then
293 ultimately get less; you can't advertise and then grant you more.
294 We're not legally able to do it, even if we all wanted to do it

295 tonight.

296 So, that is a problem right there.

297 So basically tonight all we can act on tonight is nothing
298 greater than what was advertised, which was 40 for building coverage,
299 for impervious, and 30 for the building.

300 CHAIR WILLIAMSON: That's correct.

301 MR. KRASNER: I don't know where that leaves you.

302 MS. ROUZI: If I can just make a comment. The legal ad
303 goes out three weeks before a meeting happens. So we were going off
304 of the very first letter which the applicant submitted, which was the
305 paragraph summarizing your hardship and that one indicated 35 and 40
306 percent, so that's why the agenda was drafted the way it was. And
307 that's why the legal ad went out the way it did. But I completely
308 understand that.

309 MR. KRASNER: So it's a technical thing but it's something
310 that legally we're prevented from doing anything more than what was
311 advertised.

312 MR. CATES: May I ask a question?

313 MR. KRASNER: Sure.

314 MR. CATES: So if the Board grants 40 percent, and there is
315 a credit available for pervious driveway coverage, which brings it

316 under 40 percent, does that meet the intent of the Ordinance?

317 MR. KRASNER: I don't think so. The laws for legal
318 advertising are pretty strict and they're state law, applies to any
319 action a public body takes, whether it's the Planning Commission or
320 us. And you typically have to advertise what was being granted. We
321 couldn't approve more. And you couldn't build more once we approved
322 it. The number that gets approved is what you're going to be bound
323 to.

324 MR. CATES: Well, the credit, I mean I don't, you know,
325 want to be argumentative, but the credit is a part of the act or the
326 Ordinance itself.

327 MR. KRASNER: Well, I guess there's different definitions
328 of impervious coverage and credit and the way it's calculated.

329 MR. CATES: Right. So we talked with Mr. Boyle before
330 coming and he didn't indicate that there was any problem with what we
331 were presenting and he had seen --

332 MR. KRASNER: Well, I'm not saying there's a problem with
333 the number. It's a legal requirement.

334 MR. CATES: Right.

335 MR. KRASNER: So if the ads that went to the paper and the
336 letters that went to your neighbors and the sign in your yard doesn't

337 say 41.7, then we can't approve 41.7. Doesn't mean we can't approve
338 it ever. It just means it has to be readvertised. You have to come
339 back and we have to have another hearing.

340 MR. CATES: When we apply, we will actually use the 39.5
341 percent because of the stipulated credit that's available in the
342 Ordinance. So that's the number that we'll be applying with.

343 MR. KRASNER: Well, again, maybe it's a question for the
344 City Attorney, I don't know if the credit -- I understand the City's
345 credit but again, from the legal standpoint, I don't know if we again
346 can approve -- and actually I don't think they build more physical
347 coverage than was shown on this drawing than we approve. This body,
348 whatever's approved by this body, is going to be bound by that.

349 So any credit you'd be looking to take has to be included
350 in this. Whatever is shown here, it's going to be what you're going
351 to be building, bottom line.

352 MR. CATES: That wasn't my understanding from Mr. Boyle --

353 MR. KRASNER: Right.

354 MR. CATES: -- is the problem. So the City staff is a
355 little bit at odds here. I wish he was here right now.

356 MR. KRASNER: And again, like I said, this is not -- this
357 is no judgment on the merits of the case up or down, it's just again

358 purely a technicality here.

359 MR. CATES: Right.

360 MR. KRASNER: Like I said, we cannot act on those numbers
361 and cannot approve this plan. This plan with the calculus of 41.7,
362 regardless of credits the City might give you for like the storm
363 water tax or anything like that, that's almost besides the point for
364 our narrow purposes here.

365 MR. CATES: Well, I think we're not actually approving the
366 plan, we're approving 40 percent. And I can -- we can talk to Mr.
367 Boyle. If 40 percent is the number that's approved and it turns out
368 that, you know, we're wrong, that our previous discussion was
369 incorrect, then we'll have to come back.

370 But at 40 percent, based on talking with Mr. Boyle, is
371 acceptable using the credit, then the Board has already approved
372 that.

373 MR. KRASNER: Well --

374 MR. CATES: It's not approval of a plan. It's approval of
375 a number.

376 MR. KRASNER: Correct. Well, in essence, I mean, we just
377 used it to approve the plan if we wanted to. But in essence it's a
378 number.

379 I have misgivings about acting on anything that's going to
380 put you over what's been advertised. So, your engineer, your
381 architect has broken down these numbers and gets you to a certain
382 square footage.

383 MR. CATES: Right.

384 MR. KRASNER: So what I'm saying, I don't think this Board,
385 and this is my opinion, I'm not the City Attorney, but I don't think
386 this Board can, based on the way that it was advertised, sitting here
387 tonight, July 14th, I don't think we have the ability to grant the
388 square footage or coverage that equates to 41.7.

389 MR. CATES: That's fine.

390 MR. KRASNER: So your choices are to readvertise it, if
391 that's what you really want, in order for us to even consider that,
392 you need to readvertise, you have to come back, which is your option,
393 you can do that; or if you want to proceed tonight, I suppose we
394 would -- we could grant up to 40 percent of impervious coverage.
395 That's a raw figure. It was advertised at 40 percent.

396 MR. CATES: The City Attorney has also been involved in
397 this because of the ADA aspects.

398 MR. KRASNER: Sure.

399 MR. CATES: So I think that she's aware, John Boyle's

400 aware. We'll take the 40 percent number that we've advertised and
401 move forward with that.

402 MR. KRASNER: That's going to be a square footage number
403 now. The number that's approved is going to be square footage of
404 coverage. Raw square footage of coverage. So, no credits. Raw
405 numbers. I don't think we can assume a credit or not a credit. I
406 think we have to go by a raw number. The Code is very specific.

407 MR. CATES: Okay. The City Attorney will also rule on that
408 I think. I think she can have a say in that.

409 MR. KRASNER: Well, she can but the problem is if we
410 approve a number and then there's some disagreement after the fact,
411 you may want to have to do it over again. You run the risk of
412 needing to amend the approval because you can't actually build the
413 square footage that you wanted to build.

414 Again, it's kind of up to you but I'm uncomfortable acting
415 on anything above 40 percent of the raw square footage of the lot, so
416 whatever that may be. The lot's at what? The lot's at 9 -- what's
417 the square footage of the lot?

418 MR. CATES: 10,012 square feet.

419 MR. KRASNER: 10,012. So whatever 40 percent of that
420 number is, that's the square foot of impervious cover.

421 I think we're bound, this is not a judgment up or down, I
422 don't even know where I'm going to fall out on this yet, I haven't
423 even gotten there. But I don't think we can even consider anything
424 above 40 percent of that number.

425 MR. CATES: I think that's all we're asking for.

426 MR. KRASNER: Okay. So that means that it will not be more
427 than that on the lot. Whatever credits related to the storm water
428 tax or anything else, it will be just that square footage, not a
429 square foot more, is what I'm saying.

430 MR. CATES: It's not related to storm water tax either.

431 MR. KRASNER: Right.

432 MR. CATES: It's independent of storm water tax. It's in
433 the Ordinance itself.

434 MR. KRASNER: Right. Okay.

435 CHAIR WILLIAMSON: I think that would be 4,004.8 is 40
436 percent of 10,012. And that's what it is.

437 MR. KRASNER: 4004.

438 CHAIR WILLIAMSON: Point 8.

439 MR. KRASNER: Now it's at like 4176, is that what it is?

440 So the difference of 100 --

441 CHAIR WILLIAMSON: That's my -- I'm just taking 40 percent

442 of 10,012.

443 MR. KRASNER: Right. Like I said, I think we're bound by
444 that. I don't know what staff was thinking but I know that the
445 advertisement has to be accurate.

446 You know, if you think about a setback, someone wanted to
447 build an addition and a required setback is 20 and they advertise
448 that the new building was going to be only 10 feet from the line,
449 then they come to the meeting and say, Actually we really meant it's
450 going to be nine feet, well, this is to prevent that so people know,
451 people who are interested, people who got notice know what is being
452 acted on.

453 In the same way that we would settle on a firm number
454 there, we would settle on a firm number.

455 MR. CATES: So we're settling on 40 percent.

456 MR. KRASNER: All right. I just want to make that clear.
457 If you want to proceed, that's fine.

458 CHAIR WILLIAMSON: That's a good question. I'm glad you
459 pointed that out. That's the Variance we'll be able to grant.

460 MR. KRASNER: Right.

461 CHAIR WILLIAMSON: Okay. So if you're ready to proceed.

462 MR. CATES: Yes.

463 CHAIR WILLIAMSON: Well, there's one question. Are there
464 other questions for the applicant?

465 MR. KRASNER: I have some other questions but I don't know
466 if anybody else has any questions first.

467 MR. JONES: I have a question. In your floor plan, are
468 these rooms in the living room and it looks like the dining room
469 area, were they all specifically designed with accessibility in mind?

470 MR. CATES: Yes. We've actually used the ADA Accessible
471 Design Guide which gives guidelines on free path of travel, it gives
472 guidelines on furniture, along with people in mobility equipment. It
473 gives designs on bathrooms, it gives ideas on kitchens, it gives
474 ideas on hallways. So all of that was taken into account with our
475 architect when we were designing it.

476 CHAIR WILLIAMSON: Other questions for the applicant?

477 MR. KRASNER: Let's see. A few questions.

478 I guess what I'm struggling with and it sounds like you did
479 a lot of research and I commend you for the package you put together
480 and the letter you wrote, looking at other properties. What I'm
481 struggling with is, and again, if you researched it I'm sure you
482 looked at the standards for granting a Variance, and as you know
483 they're very strict. It's either to alleviate a hardship or to allow

484 adequate utilization of the property that somehow is being prevented
485 by strictly applying the rules of the Ordinance.

486 So in any case, when we're considering relaxing the
487 standards, we need to look at, you know, what could be done by right,
488 and what the applicant's asking for, and look at what is triggering
489 the need for that.

490 And what I'm struggling with is that the lot is generally
491 regularly shaped. It's comparable to most of the lots around it.
492 There are a few that are bigger, there are a few that are smaller.
493 It's a corner lot but you're not asking for a reduction in setbacks
494 which sometimes you see on a corner lot.

495 And so the question is, what could be built by right here.
496 Clearly it would have to be a little bit smaller and some features
497 might have to change, but I guess the question is, you know, I don't
498 understand some of the ADA aspects that you mentioned, but again, one
499 other thing I would point out is that we also have to look at this
500 house will be here for a very, very long time. Potentially you won't
501 be the only owners of it.

502 So we need to look not just at the owners today but at in
503 perpetuity essentially, or for at least a generation or so and what
504 that effect is.

505 And so again, we need to look at it, almost take the human
506 element out and look at it from a physical, planning perspective and
507 a site design perspective.

508 And looking at that, I guess I'd like to hear more from you
509 about, you know, I know you mentioned a few things that are driving
510 it but what, you know, specifically what elements of the design of
511 the floor plan, you know, and the exterior couldn't be altered to
512 stay within what the Code prescribes.

513 You pointed out other houses that were built around you and
514 that the sizes are comparable, but to my knowledge those houses were
515 built by right. I'm unaware if those were built under Variance.

516 So, the question is, why can't you meet the Code? What's
517 the hardship of what's preventing adequate utilization?

518 MR. CATES: Right. You mentioned two things. One was
519 hardship and one was acceptable use, right, of the property, or --

520 MR. KRASNER: Adequate utilization.

521 MR. CATES: Adequate utilization. So I think that the
522 Americans with Disabilities Act actually defines both of those
523 things. The hardship is defined as a disability. Disability is a
524 hardship. And localities are required to make alterations to their
525 zoning ordinances in response to that hardship. That's the Americans

526 with Disabilities Act.

527 Similarly, the adequate use is also part of the Americans
528 with Disabilities Act. That a disabled person has every right to
529 have the same use and enjoyment of their home as a nondisabled person
530 does.

531 So I think that both of those are covered actually by the Americans
532 with Disabilities Act.

533 So going back to the floor plan, you look, and like I said
534 earlier, if I was going to build a house that my son was not in a
535 power chair, then I would turn the garage around and make it a front
536 load garage and I would chop off the porch. And I would have a house
537 that's well within the lot coverage and the building coverage.

538 MS. CATES: I was going to say, another piece of that is
539 the living area, you know, we need more space to allow for him to be
540 able to move around in a power chair. So when you start adding
541 furniture and looking at like more of a typical size room, it's more
542 of a limited space so.

543 MR. CATES: Right, so we did a very open floor plan you can
544 see here, and very purposefully kept the spaces open and free-flowing
545 to allow for access with equipment.

546 So I think that answers your question. I hope that it

547 does.

548 MR. KRASNER: It does to some degree.

549 Can you, I know you said this before, but why the front
550 load versus the side load is necessary. Is it the grade? You
551 explained it was room, but to get your front load garage --

552 MR. CATES: Well, I think actually that's a good point. We
553 started out actually with the house turned kind of 90 degrees. So
554 the front of the house was facing Fulton Avenue and there was a
555 garage on the right side and we started going through with the plans
556 on that and got quite a bit away along unfortunately before we
557 started looking at the elevations of the lot. And it looks like a
558 very flat line. And it is a very flat line.

559 But when you actually look at those elevations, the garage,
560 the driveway was going to have a very steep, I think it was going to
561 be 8 or 9 percent grade to get up to the garage; from the garage into
562 the house there was going to need to be an 8 foot long ramp to get up
563 to floor level; and as you went back through the house, you would end
564 up at the back end of the house with the main floor of the house
565 about a foot below grade.

566 So the lot, even as flat as it is, to make it an accessible
567 house, we ended up having to turn it and put the garage on the right

568 hand side because that's the high side of the lot and that's where
569 you want the garage to be for level access into the home.

570 So that's where we came to the problem with the ramp van
571 then. In the other configuration, we're talking back and forth
572 between two configurations here and I don't have that one, so it's a
573 little confusing. I apologize.

574 But in the other configuration, that's how it was. Howie
575 would come out of the van, turn left and go up the ramp in that case
576 into the home.

577 Here in this case we have the same thing with the side load
578 garage. Howie comes out of the van, he turns left, and goes in that
579 door to the mudroom and he's in the house.

580 With a front load garage though, the van is going to be
581 facing, you know, nose in. He would come out of the van and have to
582 go back around the back of the van, into the weather outside, back
583 around the side and into the house that way.

584 So I think that just to reasonably use the garage to
585 reasonably access the house, the sideload is the most, you know,
586 sensical thing we could come up with to do that.

587 MR. KRASNER: And then the rear door stuff, the patio and
588 the porch, again, what we're struggling with -- I know I'm struggling

589 with, is again, not that it shouldn't be able to have a patio and a
590 porch in the back, but if you're going to exceed the Code, you know,
591 it could mean, could those be scaled back in size.

592 Is there anything there we're about to do, under State Code
593 and City ordinances, approve the minimum amount of relief necessary,
594 right? And so, you know, I'm trying to make sure that we're truly at
595 that point and there's a little bit of discretion there but --

596 MR. CATES: It's a judgment call.

597 MR. KRASNER: Right, is it truly the minimum amount
598 necessary. Are there certain elements that, you know, are sort of
599 nice to have but not need to have in a typical house and, you know,
600 could those get you, if not under the limit, closer to it.

601 And, you know, again, perhaps there are things that can be
602 done, and this gets back to the issue of how we calculate coverage
603 and I assume the City Ordinance wouldn't count something as coverage
604 and then it wouldn't count. Are there things that could be done to
605 the patio so that it would be a pervious surface or it wouldn't count
606 under the definition under the Ordinance so that whatever square
607 footage cap we come up with, you can still have that space but
608 perhaps being closer to the limit.

609 Have you thought of things like that?

610 MR. CATES: I hadn't actually thought about pervious for
611 the patio. I had for the garage. I hadn't considered the patio as
612 pervious but that would certainly -- that would not be a problem to
613 have a pervious patio, I don't think.

614 MR. KRASNER: Part of the rationale for the lot coverage
615 Ordinance is storm water-based, impervious surface-based. So, again,
616 I'm trying to get to the minimum amount necessary. It just seems
617 that some of these things perhaps might be scaled back.

618 CHAIR WILLIAMSON: This question is related to that. You
619 mentioned the way the house was oriented on the lot. Were there
620 other designs that you contemplated with your architect, and I guess
621 I'm picking up on the earlier question about the size of the rooms,
622 they need to be a certain size for what you're trying to do.

623 So, were there other designs that you looked at that led
624 you to this particular footprint?

625 MR. CATES: Yeah, absolutely. You know, the first design
626 that we looked at, like I say, was one that actually fronted Fulton
627 Avenue instead of Lee Street. So we got quite a way far along with
628 that one before we realized, you know, with the elevations the way
629 they were, it really wasn't meeting what we had hoped.

630 So we ended up, you know, we had things that we liked from

631 that plan. We had I think a really neat kitchen in that plan where
632 it had a number of different work surfaces at different levels.
633 Things like that that really aided Howie's ability to be with us
634 cooking and that sort of thing. So we took some of those elements
635 and have put them in here.

636 But as far as footprint goes, I think we started out with
637 this and had some generic rooms. I think that one of the things that
638 is actually good, is using the open floor plan concept. You can tie
639 together a few different living spaces into one area and that can
640 actually, in our case, was able to keep the square footage down.

641 Another thing that we had considered was putting an office
642 in where the mudroom is. But we decided that that did nothing really
643 for the accessibility of the home. That was kind of for me, you
644 know. I work at home sometimes and I was going to have an office in
645 the house. But I said, you know, that's not what we're trying to do
646 here. We're trying to make this an accessible home for Howie and,
647 you know, my office really isn't important. So we scrapped that
648 portion of the plan and kind of slid everything in a little bit.

649 So, you know, there have been a number of changes along the
650 way to get us to this plan.

651 CHAIR WILLIAMSON: Is it my understanding that you looked

652 at different, maybe a more traditional floor plan which would have
653 had a larger footprint but opted for this floor plan, more open, that
654 actually created a smaller one?

655 MR. CATES: That's right, yeah. For example, the office
656 would have, I think, stretched the -- the garage would have been
657 pushed to the side another six feet I believe. So we've taken some
658 things, in that case the mudroom was kind of along the back there.
659 But we've definitely taken some things and brought them in. Because
660 that's actually another part of an accessible house, is you don't
661 want things to be too far away. You don't want to have to go a long
662 distance to go from one space to the next.

663 So all of those things have been taken into account in
664 every step of the way, the number one design consideration was how is
665 this going to help a person in a wheelchair enjoy the house better
666 so.

667 MS. CATES: And truly over the course of his life. I mean
668 that's what we're honestly building this for. We have -- Howie is
669 primarily and socially like any other four year old. We have really
670 high hopes for him and what his potential is.

671 But what we're planning for, if he needs to be home, he can
672 be home as an adult. So this is, we are looking beyond our

673 generation. We're looking at Howie's generation.

674 So the entire step of the way has been about his
675 accessibility and from the scope of him as a 4 year old to him as a
676 30 year old.

677 CHAIR WILLIAMSON: Okay. Are there other questions for the
678 applicant?

679 MR. THEOLOGIS: I have a couple of questions.

680 CHAIR WILLIAMSON: Please.

681 MR. THEOLOGIS: Is this home a two story home?

682 MR. CATES: It's two story with a basement.

683 MR. THEOLOGIS: With a basement. And how many square feet
684 does the porch cover?

685 MR. CATES: The porch I think is actually on here. 404
686 square feet, I think that's the -- no, I'm sorry. That's the rear
687 porch.

688 No, that's right. It's 414 -- I'm sorry that the copy is
689 bad. 414 or 404, somewhere in there, square feet.

690 MR. THEOLOGIS: Is that the front side or both, the front
691 and the back?

692 MR. CATES: That's the front and side and then the back is
693 an additional 184 square feet. So it's a lot of outdoor living

694 space, square footage, in the plan.

695 CHAIR WILLIAMSON: Okay. Other questions for the
696 applicant?

697 MR. KRASNER: I'll just follow up on that.

698 Again, without belaboring this, looking at, you know,
699 again, in real terms you're about 500 square feet over, right, on the
700 impervious and about, based on this which is less than exact, only
701 about 290 square feet over on building.

702 So on the one hand you could say, well, it's not that much
703 over what the Code allows, but on the other hand, looking at it from
704 where we sit, you know, are there things that can be done in
705 modifying the design, to get you there.

706 Now, I'm sure you've looked at that, otherwise you wouldn't
707 be here, but, you know, I'm just looking at it and I'm not an
708 architect but could the porch be made smaller? Are there things you
709 could do to try to fit within the parameters of the Code.

710 It's not that I really object to anything aesthetically
711 from a design perspective to what you're proposing, but, you know,
712 could you make a series of relatively minor adjustments and
713 modifications to various aspects of the house to get you, for
714 example, to reduce the building square footage by, the footprint

715 basically, by 280, 290 square feet, could you do things to reduce the
716 coverage by about 500 square feet?

717 I see elements of the porch and perhaps the patio, perhaps
718 parts of the driveway that perhaps could be, you know, reined in a
719 bit without dramatically altering the design that gets you, if not
720 under the Code, much, much closer to it, relatively speaking here on
721 this lot.

722 And so I'll ask you again, have you looked at that, have
723 you entertained making any further modifications to try to rein it in
724 just a little more?

725 MR. CATES: Right. I think you could probably say that
726 about any Variance request that comes in here. They could, you know,
727 take a few inches here and a few inches there and get closer and
728 closer until, you know, eventually you could probably get there.

729 But we have looked at this. We've been working on this
730 plan for almost a year now. We've come to a point that we are very
731 happy with the design. I think it's going to be a beautiful house.
732 I think it's going to be a functional house for a disabled person.
733 And I think that the requests that we're making are ultimately
734 reasonable.

735 CHAIR WILLIAMSON: Okay. Any other questions for the

736 applicant?

737 MR. JONES: How many bedrooms is this?

738 MR. CATES: It's four bedrooms upstairs and one bedroom in
739 the basement, so a total of five.

740 MR. JONES: And my last question, could you expound a
741 little bit on how the ADA is applicable to private residences? My
742 understanding is that the ADA is more for public buildings,
743 government.

744 MR. CATES: For public accommodation, that's right.

745 MR. JONES: Can you tell me a little bit more about how it
746 relates to private homes, specifically on your design.

747 Let's say there was no access to the front, let's say a
748 dirt road and you needed to pave in order to provide easy access or
749 make it accessible to those individuals with a disability. Could you
750 sort of help explain to us how your design plan in sort of the spirit
751 of the ADA such that as my colleague said, that you couldn't maybe
752 downsize the patio, the screened porch, or some other aspects of the
753 design.

754 If you could just help me understand how the ADA as you
755 envision it fits with your design plan such that making the patio or
756 porch a little bit smaller would impinge on the accessibility.

757 MR. CATES: Right. Well, it's a good point. The ADA, you
758 know, when people build houses, they're not necessarily subject to
759 the Americans with Disabilities Act. Private residences aren't
760 public accommodation and therefore, they don't have the same
761 requirements as a public accommodation. So the public accommodation
762 in this case is actually the zoning ordinances is considered the
763 public accommodation.

764 And that's, if you look, if you want more information on
765 that, there are -- I added a couple of attachments. Attachment 2 I
766 think is probably the most relevant, is the Albemarle County Land Use
767 Handbook Chapter on the Americans with Disabilities Act, which covers
768 very specifically residential situations where a public accommodation
769 needs to be made.

770 But I think that for us in terms of our design, which is
771 more the thrust of your question I think, as I've said, we've worked
772 very closely with an architect who is very familiar with ADA
773 regulations. We have used the Americans with Disabilities Act
774 Universal Design Manual as kind of a reference point for everything
775 that we've done.

776 We've also used other accessible home design books along
777 the way that gives lots of great tips from people who've done it

778 before and from people who are living in accessible homes.

779 So all of those things, like I say, every design decision
780 along the way, you have a series of decision points as you move
781 along. Every design decision that we've made has been with an eye
782 toward accessibility of the home.

783 MR. JONES: Thank you.

784 CHAIR WILLIAMSON: Okay. Any final questions for the
785 applicant?

786 There were two people that joined us after we began. Were
787 you intending to speak on this matter?

788 MS. DZIERWA: Okay. I --

789 CHAIR WILLIAMSON: You have to come up and state your name
790 and address for the record.

791 MS. DZIERWA: I'll sign in.

792 CHAIR WILLIAMSON: Would you please come up and you have to
793 sign in.

794 MR. KRASNER: We need to know who talks.

795 CHAIR WILLIAMSON: And there's one more step after that. I
796 need to swear you in.

797 (Witness sworn.)

798 CHAIR WILLIAMSON: If you could state your name and please

799 proceed.

800 MS. DZIERWA: My name is Yvonne Dzierwa. I live at 303
801 North Lee Street which is the house directly affected by these people
802 building. And I just have a few comments that I'd like to make and
803 this is with the understanding that I am not an expert in zoning or
804 planning or Americans with Disabilities. Although I do have a son
805 with autism.

806 But I would like to say that I totally support what these
807 people are doing. We've looked at the plan. We have seen how
808 carefully and how -- the attention to the City of Falls Church in
809 doing what needs to be done for this City and fitting in with the
810 community and making it for their family, we totally agree with what
811 they're doing.

812 We have also seen in the past years, couple of years, the
813 types of building that has gone on in this City. I have no idea
814 about the new rules or how they apply to builders or to citizens who
815 are building in this City but I have seen the abuse and the
816 over-building and the over-coverage on the lots in this City all over
817 the City.

818 I can't give you addresses, but Norfolk Street for one.
819 Our street, North Lee Street, where there was a developer who has put

820 four houses on there. They were well over what you're talking about
821 in terms of lot coverage. Those houses take up most of the lot.

822 Not only that, after the house is done, they put more stuff
823 on there and it covers even more of the lot.

824 So I don't understand what the real concern with all you
825 people is about coverage here when all over the City we're seeing way
826 too much coverage and abuse of building. And it's always builders
827 and developers. When private citizens want to build something, then
828 they get flack. And I'm hoping that builders get the same treatment
829 but I don't see it.

830 So I just want to say that I think what they're doing and
831 what they've planned has been very carefully thought out. It's been
832 very thoughtfully done. They want to comply and they want to make it
833 work for their family. They have a disabled son that needs to get
834 around and if you're cutting their porch size, that means that kid
835 who can't go out into a yard and play has even less room to turn his
836 wheelchair around, and a smaller porch than he would have.

837 So they've planned it out to work. And their coverage is a
838 lot less than a whole lot of other places in Falls Church that have
839 allowed the developers and the people that are building to have built
840 them.

841 So, that's what I want to say. I'm sorry. I think -- I'm
842 so glad you've moving into our neighborhood.

843 MS. CATES: Thank you.

844 CHAIR WILLIAMSON: Would you have time for a question?

845 When you say you are directly affected, are you next door?

846 MS. DZIERWA: We live next door. We will be looking at
847 this. And the fact that they want that garage to the side doesn't
848 bother us at all. It's going to make it easier for their child to
849 get out of that van and go around and get into the house without
850 having to go into the weather.

851 If it's in the winter, he doesn't have to go out into the
852 snow or the rain or the ice. He can go around and get into his house
853 and, you know, so it makes perfect sense to have it where they have
854 it.

855 And we're going to be looking at it and we don't mind at
856 all.

857 CHAIR WILLIAMSON: Okay. Thank you very much.

858 MS. DZIERWA: You're very welcome.

859 CHAIR WILLIAMSON: Any other questions?

860 And I see no other questions for the applicant. Any
861 questions for staff?

862 MR. KRASNER: Quick question for staff. Well, two
863 questions.

864 One, have we received any -- staff received any complaints,
865 calls, emails, letters related to this case?

866 MS. ROUZI: No.

867 MR. KRASNER: Other question: The last speaker referenced
868 other homes on North Lee Street. Are you aware of any Variance
869 applications on North Lee Street?

870 MS. ROUZI: I would have to check to see if there's been
871 Variances there.

872 MR. KRASNER: I just wanted to know if there's been others
873 in the neighborhood. Okay.

874 CHAIR WILLIAMSON: Okay. Then we'll close this to the
875 audience and to the applicants and we'll have discussion amongst the
876 Board.

877 MR. HOWELL: I'm satisfied with what I've heard.

878 CHAIR WILLIAMSON: Any other comments?

879 MR. KRASNER: I have a few comments.

880 This is a very tough case. I think the applicant made very
881 compelling arguments. I tell you, it's very difficult because to
882 pick up on what the last speaker said, you know, there's the human

883 element and of course there's the law. And everyone should be
884 treated the same way, whether you're a developer or private citizen,
885 no matter who you are. The Zoning Ordinance is adopted by the City
886 Council and everyone has to live by it. And if you can't live by it,
887 this is the means. There's the Variance route to get relief when
888 relief meets the standards in stake of.

889 So we're trying to balance that with your need to do what
890 you want to do with your property the way you want to.

891 And that's how we look at every case and every Variance,
892 every time someone wants to relax the Code.

893 So it's difficult. It's a very close call I would say.

894 To me, I will note for the record that we're not aware of
895 any complaints. You have letters of support from just about all your
896 neighbors except for perhaps -- there's one house that's vacant right
897 behind you. I don't know what the story is with that property,
898 someone will put in a house eventually.

899 MR. CATES: The raccoons like it.

900 MR. KRASNER: Those stone houses are nice.

901 MR. CATES: They are.

902 MR. KRASNER: So anyway, you have loads of support, no
903 complaints, and you've presented testimony that shows that the

904 accommodation that you're asking for, the relief, perhaps is driven
905 by the need to again, make reasonable accommodation

906 It's a close call for me but given that there's no
907 overwhelming opposition, I may be inclined to support it.

908 CHAIR WILLIAMSON: I think I'll just point out that I was,
909 after hearing the comments about having looked at various
910 alternatives of floor plan and then this actually created what was
911 arrived at that created a smaller floor plan, that was particularly
912 moving for me.

913 Yes.

914 MR. HOWELL: Just a comment. I have the impression we're
915 discussing among ourselves as members at the moment, is that correct?

916 CHAIR WILLIAMSON: Yes.

917 MR. HOWELL: I feel that a very persuasive case has been
918 made, a lot of work has been done. The documentation that we've been
919 given is unusually exact and clear about the various steps that have
920 been gone into, the description of the needs of the applicants' son I
921 think makes a very compelling reason for doing everything that we can
922 to ensure that they're able to go ahead more or less with the
923 limitation we define to implement this proposal.

924 CHAIR WILLIAMSON: Well, with those comments, would anyone

925 care to make a motion on this matter?

926 MR. HOWELL: I move.

927 CHAIR WILLIAMSON: You would move -- if you could expand on
928 that.

929 MR. HOWELL: Yes. Shall I make a motion?

930 CHAIR WILLIAMSON: Please.

931 MR. HOWELL: I'd like to move that we approve the Variance
932 application V1582-16 by Charles and Kimberly Cates, owner and
933 applicant, for a variance to Section 48-263(5)(a) and 48-263(6) to
934 allow a lot coverage of thirty percent instead of twenty five
935 percent; and to allow a impervious lot coverage of forty percent
936 instead of thirty five percent for the purpose of constructing a new
937 single-family house on premises known as 301 N. Lee Street, that's
938 RPC #51-125-011 of the Falls Church Real Property Records, zoned
939 R-1B, Medium Density Residential.

940 CHAIR WILLIAMSON: Is there a second?

941 MR. KRASNER: I'll second and then I just have a few
942 comments for discussion on the second.

943 Just to further elaborate on some of the points that were
944 discussed as far as again meeting the criteria, another point, that
945 while it appears that there may be a few areas where the house, you

946 know, there could be minor adjustments made, in looking at it in
947 totality, it might make it a less attractive house to remove some of
948 those, the porch, perhaps the areas where there could be changes, but
949 overall, the design overall would be perhaps less attractive without
950 some of those features.

951 And because we've heard no testimony or are aware of any
952 neighbor sentiment to the contrary, again, I feel that granting this
953 would not be a substantial detriment to the adjacent properties and
954 that meets the standards in State Code to grant relief.

955 CHAIR WILLIAMSON: Thank you.

956 We have a second.

957 Roll call vote.

958 RECORDING SECRETARY: Mr. Williamson.

959 CHAIR WILLIAMSON: Yes.

960 RECORDING SECRETARY: Mr. Krasner.

961 MR. KRASNER: Yes.

962 RECORDING SECRETARY: Mr. Howell.

963 MR. HOWELL: Yes.

964 RECORDING SECRETARY: Mr. Jones.

965 MR. JONES: Yes.

966 RECORDING SECRETARY: Mr. Theologis.

967 MR. THEOLOGIS: Yes.

968 CHAIR WILLIAMSON: Congratulations. Good luck with your
969 project.

970 MR. CATES: Thank you.

971 MS. CATES: Thank you very much.

972

973 CHAIR WILLIAMSON: The next order of Business, I understand
974 that staff has made a call today and asked to present this at a later
975 date, at our next regularly scheduled meeting which is September, so
976 we do not have Item 6 b on the Agenda.

977

978 7. OTHER BUSINESS:

979 CHAIR WILLIAMSON: Do we have any Other Business?

980 MS. ROUZI: No.

981

982 8. ADJOURNMENT

983 CHAIR WILLIAMSON: Is there a motion to adjourn?

984 MR. KRASNER: So moved.

985 MR. JONES: Second.

986 CHAIR WILLIAMSON: Okay. Roll call vote.

987 RECORDING SECRETARY: Mr. Williamson.

988 CHAIR WILLIAMSON: Yes.

989 RECORDING SECRETARY: Mr. Krasner.

990 MR. KRASNER: Yes.

991 RECORDING SECRETARY: Mr. Howell.

992 MR. HOWELL: Yes.

993 RECORDING SECRETARY: Mr. Jones.

994 MR. JONES: Yes.

995 RECORDING SECRETARY: Mr. Theologis.

996 MR. THEOLOGIS: Yes.

997 CHAIR WILLIAMSON: This meeting is adjourned.